IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Hari Shankar Gaur v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.944/2004
under Article 226 of the Constitution of India.

Date of Order : 15th September, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.Mridul, Sr.Advocate assisted by Shri R.N.Upadhyay, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

By this petition for writ an appropriate writ, order or direction is sought by the petitioner to restrain the respondents to proceed with the inquiry initiated against him by a memorandum dated 27.12.1990 under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as “the Rules of 1958”).

The facts in brief leading to this petition for writ are that the petitioner while holding the

post of Food Inspector in the office of Chief Medical and Health Officer, Udaipur was served with a charge sheet through a memorandum dated 27.12.1990 under Rule 16 of the Rules of 1958. By the charge sheet referred above the petitioner was charged for six allegations of misconduct pertaining to some act of the year 1975. The petitioner before submitting explanation in pursuant to the memorandum dated 27.12.1990 submitted a communication dated 1.2.1991 making a request to the disciplinary authority to furnish him a list of documents and a list of witnesses on which the prosecution proposed to rely to prove the charges. The petitioner by various documents reiterated the request made above. By a communication dated 15.12.1991 the petitioner was permitted to inspect the record concerned in the office of Additional Director, Medical and Health Services, Government of Rajasthan, Jaipur, however, the list of documents and witnesses as demanded by the petitioner under the communication dated 1.2.1991 was not supplied to him. By a communication dated 30.10.1993 the petitioner was informed by the Chief Medical and Health Officer, Jodhpur to report in his office and to submit an application in writing for obtaining copies of the record desired. The same instruction was given to the petitioner by a communication dated 12.12.2003. The petitioner in these circumstances approached this Court to restrain the respondents to hold disciplinary proceedings against him for the allegations pertaining

to the year 1975 specially in the circumstances that he stood retired from service on achieving age of superannuation on 31.5.1996.

A reply to the writ petition and also an additional reply to the writ petition is filed on behalf of the respondents. The respondents along with additional reply to the writ petition placed on record a copy of the inquiry report submitted by the inquiry officer as a consequence of inquiry conducted under the memorandum dated 27.12.1990. The aforesaid inquiry report was forwarded to the disciplinary authority along with the record of inquiry on 14.1.2002. The inquiry officer after holding the inquiry exonerated the petitioner from all the allegations. The inquiry officer in quite unambiguous terms held that no document to support the allegations is available with the prosecution, therefore, in absence of evidence the petitioner cannot be held guilty for the charges levelled. The respondents also placed on record a communication along with additional affidavit dated 25.8.2005 sworn-in by Shri Mangilal Seth, Assistant Accounts Officer, in the office of Chief Medical and Health Officer, Udaipur, whereby the Additional Director (Administration), Medical and Health Services, Rajasthan, Jaipur communicated to officer-in-charge of the present writ petition that the disciplinary authority under an order dated 1.4.2002 did not choose to accept the findings given by the

inquiry officer and, therefore, directed him to complete the inquiry on basis of record available. A copy of the note sheet giving rise to the said order dated 1.4.2002 is also placed on record along with document dated 24.8.2005.

Heard counsel for the parties.

From perusal of report of inquiry officer (Anx.R/8) it is apparent that the inquiry officer exonerated the petitioner from the charges of misconduct due to non-availability of evidence. The inquiry officer has given findings against each and every charge exonerating the petitioner being charges not supported by evidence. The disciplinary authority after receiving the report of inquiry by order dated 1.4.2002 directed the inquiry officer to hold the inquiry within a period of 15 days on basis of the record available.

It is admitted position that no further proceedings have yet taken place and also the petitioner has not received post retiral benefits including pensionary benefits due to pendency of the disciplinary proceedings. From perusal of inquiry report it is clear that the inquiry officer reached at a specific finding that no allegation for which the petitioner was charged stood proved in absence of evidence. The inquiry officer was also of the view

that in absence of relevant documents no useful purpose was going to be served by holding an inquiry at a belated stage of more than 25 years than to the date of occurrence of alleged misconduct. The disciplinary authority by order dated 1.4.2002 directed the inquiry officer to complete the inquiry on basis of the available record. The note, on basis of the order dated 1.4.2002 was issued, reads as under:-

> "127 पत्रावली का पुन: अवलोकन करने पर ज्ञात हुआ कि चार्ज शीट दी जा चुकी थी मगर जांच अधिकारी ने निष्कर्ष दिया कि उपस्थापक द्वारा रिकार्ड नष्ट होना बताया क्योंकि केस बहुत पुराना है। कर्मचारी को सेवा निवृत हुए भी 6 वर्ष से ज्यादा हो गये है। अत: निस्तारण करना ही उचित रहेगा। आदेशार्थ एवं अवलोकनार्थ
>
> सही /-
> 22-3
>
> 128 अति. निदेशक (प्रशा.)
>
> This is not possible. The Enquiry has to be completed as per the available record.
>
> Sd/-"

The order dated 1.4.2002 is said to be passed under sub-rule(9) of Rule 16 of the Rules of 1958. Sub-rule(9) of Rule 16 of the Rules of 1958 empowers disciplinary authority to remand the case for further/denovo inquiry in case it has reason to believe that the inquiry already conducted has been laconic in some respect or the other. For doing so the

disciplinary authority is required to record just and sufficient reasons in writing.

In the present case the inquiry officer submitted his report and record of the inquiry to the disciplinary authority on 14.1.2002 whereupon the disciplinary authority passed the order dated 1.4.2002. The order dated 1.4.2002 does not bear any just and sufficient reason as required under sub-rule(9) of Rule 16 of the Rules of 1958 to order denovo/further inquiry. As such the order dated 1.4.2002 is no order in eye of law. No inquiry against the petitioner can be allowed to be proceeded further on basis of the order dated 1.4.2002.

For the reasons stated above the order dated 1.4.2002 deserves to be quashed. In normal course a direction could have been given to the disciplinary authority to pass an order afresh as required under sub-rule(9) of Rule 16 of the Rules of 1958 by considering the inquiry report, however, in present set of facts and circumstances to the effect that the charges pertains to the year 1975 and the petitioner has already retired from service on achieving the age of superannuation on 31.5.1996, I do not consider it appropriate to remand the matter to the disciplinary authority for passing order under sub-rule(9) of Rule 16 of the Rules of 1958. The petitioner has already faced more than sufficient mental agony due to

continuation of disciplinary proceedings for a period of more than 15 years and also by not getting post retiral benefits for a period of about 10 years. It is also stated at Bar that even during service tenure the claim of selection grade was not allowed to the petitioner due to pendency of the disciplinary proceedings. The totality of facts require that a direction be given to the respondents not to proceed with the inquiry initiated against the petitioner under the charge sheet dated 27.12.1990.

Accordingly this petition for writ is allowed. The disciplinary proceedings initiated against the petitioner against the memorandum dated 27.12.1990 are ordered to be treated dropped and the petitioner is declared entitled to claim all reliefs for which he is entitled in event of non-initiation of disciplinary proceedings under the memorandum dated 27.12.1990. The petitioner is also entitled for all post retiral benefits including pensionary benefits accordingly. The respondents are directed to clear all the claims for which the petitioner is entitled within a period of three months from today.

(GOVIND MATHUR),J.

kkm/ps.